

**EUROPEAN COMMISSION**

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

Director General

Brussels, 28. 06. 2016  
FK/AG fisma.ddg.d.1(2016)3596558

*To be sent by registered mail to:*

Mr. Sven Giegold  
ASP 05F163  
Rue Wiertz 60  
1047 Brussels

**Subject: Your application for access to documents with reference -  
GestDem 2016/2283**

Dear Mr Giegold,

We refer to your e-mail dated 28/04/2016 in which you make a request for access to documents registered under the above mentioned reference number.

Your application concerns a document made available to the members of the Basel Committee on Banking Supervision's (BCBS) working group on capital (WGC) on the BCBS's intranet "ebis".

Therefore, having examined the document requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that your application cannot be granted, as disclosure is prevented by exception to the right of access laid down in Article 4 of this Regulation.

The document which you seek to obtain relates to a decision which has not yet been taken by the Commission (or the Basel Committee on Banking supervision).

The exception laid down in Article 4(3) first subparagraph of Regulation (EC) No 1049/2001 applies to this document: "Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure".

The BCBS's WGC reformatted an informal email contribution from a representative of DG FISMA, who was acting as an observer in this technical expert group. This contribution did by no means represent an official position of the European Commission or DG FISMA, as was obvious from the wording of the email. It has to be highlighted that this email was drafted for the restricted audience of this technical group, where it is customary for the participants to exchange their opinions on an informal basis, and as such it is not intended for these opinions to be made public.

Since the Commission still needs to decide on if and/or how to transpose the proposals of the BCBS, disclosure of the document requested would undermine the protection of the decision-making process of the Commission. It would reveal important preliminary views and policy

options which are currently under consideration; the Commission's services must be free to explore all possible options in preparation of a decision, free from external pressure.

The exception laid down in Article (3) of Regulation 1049/2001 applies, unless there is an overriding public interest in disclosure of the document. However, you have not been able to identify such an interest.

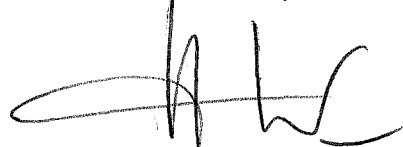
I have also examined the possibility of granting partial access to the requested document in accordance with Article 4(6) of Regulation (EC) No 1049/2001. However, all parts of the document are interrelated in such a way that disclosing only part of it might provide misleading information about the solutions that the Commission is exploring in order to address the issues tackled in the document.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission  
Secretary-General  
Transparency unit SG-B-4  
BERL 5/327  
B-1049 Bruxelles  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Olivier Guersent', written in a cursive style.

Olivier Guersent

Contact: Giulia Bertezolo, Fisma D.1, tel. 02 2957528